IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3787 of 2002
with
SPECIAL CIVIL APPLICATION No 684 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJABHAI GOVINDBHAI KOLI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3787 of 2002
   MR PS CHAMPANERI for Petitioner No. 1-4/1
   MR HD DAVE, AGP, for Respondent No. 1-3
   ..... for Respondent No. 4
   RULE SERVED for Respondent No. 4/1-4/9
2. Special Civil Application No. 684 of 2003
   MR HARIN RAVAL for the Petitioner
   MR HD DAVE, AGP, for Respondents Nos. 1-3

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 22/01/2004

ORAL JUDGEMENT

In view of an order dated 6.2.2003 passed by this court in Special Civil Application No. 684 of 2003, both the petitions are heard together and are decided by this common judgment.

2. In both these petitions, the orders passed by the Collector, Rajkot, dated 11.6.1998 as well as an order passed by the Gujarat Revenue Tribunal in Revision Application No. TEN:BR:11/98 dated 8.9.2000 confirming the said order of the Collector, Rajkot, have been challenged.

3. The facts giving rise to these petitions, in a nutshell, are as under :

3.1 The petitioner in Special Civil Application No. 684 of 2003 is the daughter of late Shri Jagjivandas Kalidas, who was the owner of land admeasuring 15 acres 22 gunthas bearing Survey No. 30 situated at village Madhapar, taluka and district Rajkot. Shri Jagjivandas Kalidas expired and thereafter the land in question had been mutated in name of his widow Nandkunvarben. Smt. Nandkunvarben also expired and as her heir, her daughter Ramaben Girdharlal Nathwani was brought on record. Special Civil Application No. 3787/02 has been filed by heirs of Govindbhai Koli, Bhanubhai Govindbhai Koli and Shri Vallabhbhai Bhanubhai Koli, who represent buyers of the land, which was originally owned by late Shri Jagjivandas Kalidas.

3.2 The facts, which are not in dispute, are that late Shri Jagjivandas Kalidas expired on 3.6.1976 and at the relevant time he was the owner of the land in question. Upon his death, widow of late Shri Jagjivandas Kalidas, namely, Nandkunvarben, had inherited the said land. Nandkunvarben sold the land in question to Shri Rajabhai Govindbhai Koli, Shri Ranchodbhai Govindbhai Koli, Shri Kanjibhai Govindbhai Koli and Shri Bhanubhai Govindbhai Koli on 4.4.1979 by a registered sale deed for a consideration of Rs. 35,000/-. The buyers were put in possession of the land in question and they or their heirs are cultivating the land in question.

3.3 For the sake of convenience, the petitioner of Special Civil Application No. 684 of 2003 has been described herein as 'seller', whereas the petitioners of

Special Civil Application No. 3787/02 have been described as 'buyers' as they are heirs of the persons, who had purchased the land in question from late Nandkunvarben.

4. The land in question was covered under the provisions of Saurashtra Gharkhed Tenancy Settlement and Agricultural Lands Ordinance, 1949 (hereinafter referred to as 'the Ordinance').

5. According to the submissions made on behalf of the petitioners of both the petitions, the buyers and their ancestors had cultivated the land in question as tenants of late Shri Jagjivandas Kalidas. They were also in actual possession of the land in question at the time when the land in question had been sold on 4.4.1979.

6. Section 54 of the Ordinance provides for certain restrictions on the transfer of the land covered under it. However, sec. 54(2) of the Ordinance provides that the said restriction would not apply if the agricultural land is sold in favour of an agricultural labourer or an artisan. According to the petitioners, at the time when the land in question had been sold by late Nandkunvarben on 4.4.79, persons, in whose favour the land had been sold, were agricultural labourers. It has been submitted that their names were very much on record as tenants in respect of the land in question, but as they did not own any land, they were agricultural labourers. Looking to the provisions of explanation to sub-sec. (2) of sec. 54 of the Ordinance, as the land in question was sold by late Nandkunvarben to agricultural labourers, it was not at all necessary for late Nandkunvarben to obtain permission of any authority.

7. Section 54 of the Ordinance reads as under :

> 54. Transfer to non-agriculturists barred.-(1) Save as provided in this Ordinance, --
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> (a) no sale (including sales in execution of a decree of a civil court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue), gift, exchange or lease of any land where lease is by law allowed or interest therein, or
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> (b) no mortgage of any land or interest therein in which the possession of the mortgaged property is delivered to the

mortgagee, shall be valid in favour of a person who is not an agriculturists; or

(c) No agreement made by an instrument in writing for the sale, gift, exchange, lease or mortgage of any land or interest therein.

Provided that the Collector or an officer authorised by the Government may grant permission for such sale, gift, exchange, lease, where lease is by law allowed, or mortgage or for such agreement, on such conditions as may be prescribed.

Provided further that no such permission shall be granted, where land is being sold to a person who is not an agriculturist for agricultural purpose, if the annual income of such person from other sources exceeds five thousand rupees.

(2) Nothing in this section shall be deemed to prohibit the sale, gift, exchange or lease of a dwelling house or the site thereof or any land appurtenant to it in favour of an agricultural labourer or an artisan.

Explanation.- For the purpose of this section in so far as it relates to sale or lease of land, the term "agriculturist" shall include a Maldhari and Landless Labourers employed in agricultural operations.

8. It has been further submitted on behalf of the petitioners that under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as 'the ULC Act'), requisite form under sec. 29(1)(a) had been filed in respect of the land and necessary order exempting the land in question from operation of the provisions of ULC Act had also been passed by the competent authority.

9. In the aforestated circumstances, a show-cause notice dated 27.6.1996 had been issued to the buyers by the Collector, Rajkot, whereby they were called upon to show cause as to why the land in question should not be forfeited under sec. 75 of the Ordinance as the land in question had been sold in violation of the provisions of sec. 54 of the Ordinance. After hearing the concerned parties, ultimately the Collector, Rajkot, by an order

dated 11.6.98 came to the conclusion that while effecting sale of the land in question, the provisions of sec. 54 of the Ordinance had been violated and, therefore, as per the provisions of sec. 75 of the Ordinance, the persons in possession of the land in question were to be evicted and the land in question was forfeited to the Government.

10. Being aggrieved by the said order, Revision Application No. TEN:BR:11/98 had been filed before the Gujarat Revenue Tribunal. The Tribunal was pleased to dismiss the revision application on 8.9.2000.

11. Being aggrieved by the order passed by the Collector, Rajkot, and the order in revision passed by the Tribunal confirming the said order, the petitioners have approached this court.

12. The learned advocates appearing for the petitioners in both the petitions have mainly submitted that as the buyers were agricultural labourers, it was not necessary for the concerned parties to obtain any permission for sale of the land in question under the provisions of sec. 54 of the Ordinance. It has been submitted that sufficient evidence had been adduced before the Collector, Rajkot, to show that the buyers were agricultural labourers and they were also tenants in respect of the land in question. Evidence was also adduced to show that names of the buyers had been shown in certain government record and as they were agricultural labourers, as per explanation to sec. 54(2) of the Ordinance, it was not necessary to take any permission from the Collector, Rajkot before effecting transfer of the land in question.

13. It has been further submitted that sec. 75 of the Ordinance does not empower the government authorities to forfeit the land. At the most, the person, who is in unauthorised occupation of the land, i.e., the buyers, can be evicted summarily from the land in question or the management of the land in question can be taken over by the government authorities in accordance with the Ordinance, but no provision of the Ordinance empowers the government authorities to forfeit the land in question and therefore the impugned order passed by the Collector, Rajkot, is illegal and bad in law.

14. It has been further submitted by the learned advocates that the Gujarat Revenue Tribunal did not properly appreciate the submissions made before it and it also committed an error by confirming the order passed by the Collector, Rajkot.

15. Thus, it has been mainly submitted that the impugned order is bad in law for the reason that no permission of the Collector was required before effecting sale of the land in question and there is no power with the government authorities to forfeit the land in question. It has been further submitted that in fact the land in question is being used for agricultural purposes even today by the heirs of the persons, who had bought the land.

16. On the other hand, learned AGP Shri H.D. Dave has submitted that the impugned order passed by the Collector, Rajkot, is just, legal and proper. So as to substantiate his submission, it has been submitted by him that the buyers were not found to be agricultural labourers or even tenants of late Shri Jagjivandas Kalidas. He has drawn my attention to the order dated 16.6.1998 passed by the Collector, Rajkot. The Collector, Rajkot, has not believed the fact that the buyers were agricultural labourers or tenants in respect of the land in question at the relevant time. He has drawn my attention to para 7 of the said order to show that the Collector, Rajkot, had come to a specific finding that the buyers were not tenants, but in fact name of late Shri Jagjivandas Kalidas was on record as an agriculturist owning the land in question.

17. It has been also submitted by the learned AGP that when an application under the provisions of sec. 20(1)(a) of the ULC Act had been submitted before the competent court, exemption in respect of the land in question from the provisions of the said Act had been granted by an order dated 12.3.79 on certain conditions. He has placed a copy of the order passed by the State of Gujarat and has relied upon condition No. 7 incorporated in the said order. By virtue of the said condition, it was obligatory on the part of the parties to effect sale of the land in question under the provisions of the Ordinance only after taking appropriate permission from the Collector, Rajkot. Thus, according to the learned AGP, condition No. 7 of the said order had been violated. He has drawn my attention to the fact that a copy of the said order had already been served upon late Nandkunvarben and names of the buyers, to whom the land was to be sold, had been referred to in the body of the said order dated 12.3.79. It has been, therefore, submitted by the learned AGP that though the sale was to be effected only after taking permission from the Collector, Rajkot, under sec. 54 of the Ordinance, as the land had been sold without taking permission from the

Collector, Rajkot, the petitioners had committed breach of the conditions incorporated in the order dated 12.3.79.

18. Thus, the learned AGP has tried to support the order passed by the Collector, Rajkot.

19. I have heard the learned advocates and have also perused the order dated 12.3.79 passed under the provisions of the ULC Act, which has been produced by the learned A.G.P and has been kept on record.

20. It is not in dispute that the impugned order has been passed under the provisions of the Ordinance stating that the parties had committed breach of sec. 54 of the Ordinance and, therefore, the land in question was being forfeited to government under the provisions of sec. 75 of the Ordinance.

21. It is pertinent to note that before passing the impugned order, the Collector, Rajkot, had also issued a show-cause notice calling upon the petitioners to show cause as to why the land in question should not be forfeited as the petitioners had committed breach of the provisions of sec. 54 of the Ordinance. The said show-cause notice dated 27.6.96 is at Annexure 'G' to Special Civil Application No. 684/03. Upon perusal of the said notice, it is clear that the said notice had been issued for the alleged violation of sec. 54 of the Ordinance. The said fact is clearly reflected from the subject referred to in the show-cause notice. Thus, it is clear that the Collector, Rajkot, wanted to initiate proceedings under the provisions of the Ordinance because breach of sec. 54 of the Ordinance had been committed while selling the land in question by late Nandkunvarben in favour of the buyers. It is also pertinent to note that the authority, namely, the Collector, Rajkot, had issued the show-cause notice under the powers vested in him by virtue of the provisions of sec. 75 of the Ordinance.

22. The question, which this court has to consider is, whether the land in question has been sold in violation of the provisions of sec. 54 of the Ordinance. It is the case of the petitioners that the sale was in accordance with the provisions of sec. 54 of the Ordinance as it has been sold to agricultural labourers and, therefore, it was not necessary to obtain any permission from the authority. It is also the case of the petitioners that the buyers had been described as tenants in the revenue record, which was produced before

the Collector, Rajkot, when he had heard the matter in pursuance of the show-cause notice dated 27.6.96 issued to the concerned parties. Even upon perusal of the impugned order passed by the Collector, Rajkot, it appears that before the Collector, Rajkot, evidence was adduced to the effect that names of the buyers had been recorded in certain documents, which have been referred to in para 7.2 of the Collector's order. Even in para 7.3 of the impugned order passed by the Collector, Rajkot, it has been recorded that for a period exceeding 6 years, the names of the buyers had been recorded as tenants in respect of the land in question. It is not in dispute that the buyers are the heirs of Koli Govind Raghav, who enjoyed status of a tenant during the period commencing from 1947 to 1954. It is the case of the petitioners that even thereafter late Koli Govind Raghav or his heirs were in actual occupation of the land in question and were cultivating the land in question as tenants of late Shri Jagjivandas Kalidas or late Nandkunvarben, widow of late Shri Jagjivandas Kalidas.

23. Upon perusal of the impugned order passed by the Collector, Rajkot, it also appears that the Collector had recorded the aforestated facts. However, without assigning any reasons, he has come to a conclusion that subsequently late Shri Jagjivandas Kalidas had got his name entered in the revenue record as an agriculturist. It, however, does not appear as to why, in spite of the aforestated facts recorded in the order, he came to the conclusion that there was violation of the provisions of sec. 54 of the Ordinance or that the land had been sold to persons, who were not agricultural labourers. If Koli Govind Raghav was the tenant of late Shri Jagjivandas Kalidas, and if he had cultivated the land in question, and as he was not having any land, he ought to have been treated as an agricultural labourer. It is also not in dispute that after his death, some of his heirs had continued to cultivate the land in question and, therefore, they were either agricultural labourers or tenants of late Shri Jagjivandas Kalidas or his widow Nandkunvarben.

24. Upon perusal of the impugned order, it appears that the Collector, Rajkot, has either not come to the right conclusion or has not appreciated the evidence adduced before him properly. There appears to be ambiguity so far as his observations on the status of the buyers of the land are concerned, because, though he has recorded the fact that evidence was adduced before him to the effect that for certain period Koli Govind Raghav was a tenant in respect of the land in question, ultimately

he has come to the conclusion that permission required to be taken under sec. 54 of the Ordinance was not taken.

25. Looking to the aforestated facts, the order passed by the Collector, Rajkot, does not appear to be proper. He has not appreciated the evidence adduced before him properly and, therefore, the order deserves to be quashed and set aside with a liberty to him, or a competent authority, who has been delegated the powers, to take appropriate action under the Ordinance to reconsider the case afresh and to come to a conclusion whether the sale had taken place in violation of the provisions of sec. 54 of the Ordinance.

26. The submission made by the learned AGP that there was breach of condition No. 7 of the order dated 12.3.79 does not appear to be just and proper for the reason that the Collector had passed the impugned order under the provisions of the Ordinance. He was not concerned with the provisions of the ULC Act, at the time when he had issued notices to the concerned parties. Upon perusal of the order, it is very clear that he was exercising his powers under the provisions of the Ordinance and not under the provisions of the ULC Act. Having once initiated proceedings under the Ordinance, the Collector, Rajkot, cannot look into other provisions and take a final decision under provisions of a different Act. If the Collector, Rajkot, has exercised powers under the provisions of the ULC Act, as submitted by the learned AGP, then also the impugned order would become bad in law for the reason that he had not given any opportunity of hearing to the concerned parties before taking the said action under the provisions of the ULC Act. If he had taken any action under the said Act, he ought to have heard the concerned parties by issuance of a show-cause notice under the provisions of the said Act, but having not done so, it cannot be presumed that the Collector, Rajkot, had exercised his powers under the provisions of the ULC Act.

27. For the aforestated reasons, there is an infirmity in the order passed by the Collector, Rajkot, and therefore it is quashed and set aside. It is also pertinent to note that, upon perusal of the provisions of sec. 75 or sec. 54 of the Ordinance, there does not appear to be any power with the Collector for directing forfeiture of the land in question. It appears that either the land should have been reverted to the original owner or management of the land should have been taken over by the government in accordance with the provisions of the Ordinance.

28. For the aforestated reasons, the impugned orders are quashed and set aside. The matter is remanded to the concerned authority. If a decision is taken to consider the issue afresh, an appropriate show-cause notice shall be issued to the concerned parties as soon as possible and preferably within a period of two months from the date of receipt of this judgment by the concerned authority and the concerned authority shall decide the matter within 3 months from the date of service of the show-cause notice to the concerned parties.

29. The parties to the litigation shall not transfer, deal with or alienate the land in question or shall not create any right in favour of any third party so as to frustrate the proceedings, which might be initiated by the concerned authority.

The petitions are, thus, allowed. Rule is made absolute to the above extent in each of the petitions with no order as to costs.

(A.R. Dave, J.)

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